

IN THE SUPREME COURT OF THE STATE OF MONTANA  
NO. DA 09-0322

PLAINS GRAINS LIMITED PARTNERSHIP, a Montana limited partnership; PLAINS GRAINS, INC., a Montana corporation; ROBERT E. LASSILA and EARLYNE A. LASSILA; KEVIN D. LASSILA and STEFFANI J. LASSILA; KERRY ANN (LASSILA) FRAZER; DARYLE E. LASSILA and LINDA K. LASSILA; DOROTHY LASSILA; DAN LASSILA; NANCY LASSILA BIRTHWISTLE; CHIRSTOPHER LASSILA; JOSEPH W. KANTOLA and MYRNA R. KANTOLA; KENT HOLTZ; HOLTZ FARMS, INC., a Montana corporation; MEADOWLARK FARMS, a Montana partnership; JON C. KANTOROWICZ and CHARLOTTE KANTOROWICZ; JAMES FELDMAN and COURTNEY FELDMAN; DAVID P. ROEHM and CLAIRE M. ROEHM; DENNIS N. WARD and LaLONNIE WARD; JANNY KINION-MAY; C LAZY J RANCH; CHARLES BUMGARNER and KARLA BUMGARNER; CARL W. MEHMKE and MARTHA MEHMKE; WALTER MEHMKE and ROBIN MEHMKE; LOUISIANA LAND & LIVESTOCK, LLC., a limited liability corporation; GWIN FAMILY TRUST, U/A DATED SEPTMENT 20, 1991; FORDER LAND & CATTLE CO.; WAYNE W. FORDER and DORTHY FORDER; CONN FORDER and JEANINE FORDER; ROBERT E. VIHINEN AND PENNIE VIHINEN; VIOLET VIHINEN; ROBERT E. VIHINEN, TRUSTEE OF ELMER VIHINEN TRUST; JAYBE D. FLOYD and MICHAEL E. LUCKETT, TRUSTEES OF THE JAYBE D. FLOYD LIVING TRUST; ROBERT M. COLEMAN and HELEN A. COLEMAN; GARY OWEN and KAY OWEN; RICHARD W. DOHRMAN and ADELE B. DOHRMAN; CHARLES CHRISTENSEN and YULIYA CHRISTENSEN; WALKER S. SMITH, JR. and TAMMIE LYNEE SMITH; JERMOME R. THILL; and MONTANA

FILED

SEP 11 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

ENVIRONMENTAL INFORMATION CENTER, a  
Montana nonprofit public benefit corporation,

Appellants,

v.

BOARD OF COUNTY COMMISSIONERS OF  
CASCADE COUNTY, the governing body of the County  
of Cascade, acting by and through Peggy S. Beltrone,  
Lance Olson and Joe Briggs,

Appellees,

And

SOUTHERN MONTANA ELECTRIC GENERATION  
and TRANSMISSION COOPERATIVE, INC.; the  
ESTATE OF DUANE L. URQUHART; MARY  
URQUHART; SCOTT URQUHART; and LINDA  
URQUHART,

Appellees/Cross-Appellants.

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From the Montana Eighth Judicial District Court  
Cause No. BDV-08-480  
Honorable E. Wayne Phillips Presiding

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**MOTION OF NATIONAL TRUST FOR HISTORIC PRESERVATION IN  
THE UNITED STATES AND THE MONTANA PRESERVATION  
ALLIANCE FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF, AND BRIEF  
IN SUPPORT**

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The Applicants, National Trust for Historic Preservation in the United States (“National Trust”) and the Montana Preservation Alliance (“MPA”), pursuant to Rule 12 (7), M.R.App.P., move this Court for leave to appear as *amici curiae* and to file an *amicus curiae* brief. The proposed *amici* set out its arguments in support of the position of the Appellants.

#### **A. INTEREST OF *AMICI CURIAE***

1. The National Trust was chartered by Congress in 1949 as a private nonprofit organization to “facilitate public participation” in the preservation of our nation’s heritage. 16 U.S.C. §§ 461, 468. With more than 230,000 members nationwide, including more than 500 members in Montana, the National Trust works to protect significant historic sites and revitalize the livability of our communities by advocating for historic preservation as a fundamental value in programs and policies of the public and private sectors. Our members have a substantial interest in upholding the effectiveness of local zoning and preservation laws in communities throughout the country and specifically in Montana.

The National Trust has its headquarters in Washington, D.C., and also has nine regional and field offices throughout the country. The National Trust’s Mountains/Plains Regional office in Denver, Colorado is involved in preservation issues in Montana. This office actively provides technical assistance to the public, preservation organizations, and local, state, and federal officials in Montana on

preservation issues, advocacy, organizational development and management, preservation law, and real estate development.

2. The Lewis and Clark Great Falls Portage National Historic Landmark is one of the best preserved and most accessible landscapes along the Lewis and Clark Trail. This National Historic Landmark marks the location where, in 1805, the historic expedition faced its most challenging obstacle — the 18-mile, 31-day portage around the Great Falls of the Missouri River. Part of the rezoned area at issue in this lawsuit is within the National Historic Landmark.

3. The National Trust's Washington, D.C. and Mountains/Plains offices have been actively involved in advocating for the preservation and the protection of the Lewis and Clark Great Falls Portage National Historic Landmark in Great Falls, Montana, for more than three years. The National Trust has worked closely with our Statewide and Local Partner, Montana Preservation Alliance, to protect this important historic and open space resource. Specifically, the National Trust submitted written testimony during the local rezoning process for the land at issue in this appeal. Additionally, the National Trust has participated in the federal processes associated with the development project proposed for the land at issue in this appeal, which includes portions of the Lewis and Clark Great Falls Portage National Historic Landmark.

4. In light of its interest, involvement, and expertise in the subject of historic preservation and nationally-significant historic properties, the National Trust frequently participates as a plaintiff or *amicus curiae* in both state and federal judicial proceedings relating to the enforcement or application of preservation or zoning laws in order to protect and preserve the nation's sensitive historic and environmental resources.

5. The Montana Preservation Alliance was established in 1987. With approximately 250 members, the MPA is the only statewide nonprofit organization dedicated to protecting historic places, traditional landscapes, and cultural heritage and to providing Montanans with resources necessary to preserve Montana's unique history and culture. The MPA has also been involved at the local level in the rezoning process and the federal processes associated with the development project proposed for the land at issue in this appeal.

#### **B. REASONS WHY *AMICI CURIAE*'S BRIEF IS DESIRABLE**

1. *Amici* are particularly concerned with both the November 28, 2008 and May 27, 2009, District Court Orders denying summary judgment to the Appellants because of the severe and negative impact these Orders will have on the preservation of the Lewis and Clark Great Falls Portage National Historic Landmark. The District Court's failure to consider the impact of the construction of a massive electric generating industrial power complex on a nationally-

significant public resource is extremely detrimental to the general public and should have been considered under the third factor of this Court's decision in *Little v. Board of County Comm'rs of Flathead County*, 193 Mont. 334, 346, 631 P.2d. 1282, 1289 (1981). Under *Little*, the District Court was required to consider the nature of the Appellees' request and whether it was "designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public." *Id.* Amici are concerned that the impact of the District Court's dismissal of the public interest factor of the spot zoning test could have negative implications for other important historic resources identified for the use and enjoyment by the general public in Montana.

2. Amici's proposed *amicus curiae* brief will focus on the issue surrounding the lack of treatment or consideration the lower court gave to the impact suffered by the general public from the loss of an important historic and natural resource, namely the Lewis and Clark Great Falls Portage National Historic Landmark. The proposed *amicus curiae* brief will also provide background information for this Court about the importance of the Lewis and Clark Great Falls Portage National Historic Landmark to the citizens of Montana and the United States.

### **C. PARTY AMICI SUPPORT**

The proposed *amici* support the Appellants.

**D. WHEN *AMICI* INTEND TO FILE BRIEF**

Proposed *amici* intend to file their Brief on or before September 28, 2009.

**E. WHETHER PARTIES CONSENT.**

1. Appellants have consented to the *amici*'s participation in this case.

Appellees, however, object to this request to participate as *amici curiae*.

Dated this 11<sup>th</sup> day of September, 2009.

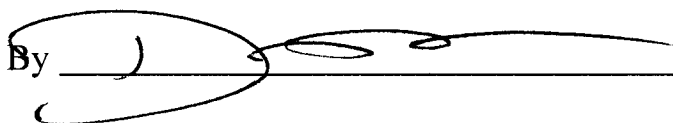
By 

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2004 for Mac is 921, not averaging more than 280 words per page, excluding caption, certificate of compliance, and certificate of service.

By 

## CERTIFICATE OF SERVICE

I certify that on September 11, 2009 a true and correct copy of the foregoing was sent by U.S. mail, first class postage prepaid, to the following:

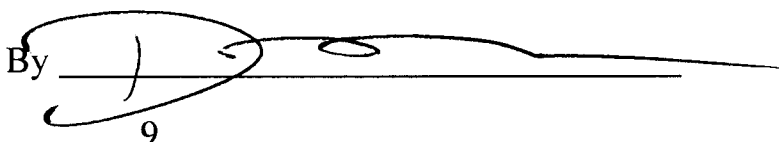
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